

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

**United States Courts
Southern District of Texas
ENTERED**

APR 20 2005

Michael N. Milby, Clerk of Court

VERNIE W. MCDANIEL, #1044347 \$
V. \$ CIVIL ACTION NO. G-05-134
DOUG DRETKE, DIRECTOR, \$
TEXAS DEPARTMENT OF CRIMINAL \$
JUSTICE-INSTITUTIONAL DIVISION \$

ORDER OF DISMISSAL

Before the Court for its Order of Acceptance is a Report and Recommendation of the Magistrate Judge, entered on March 30, 2005, which recommends that the Application for Writ of Habeas Corpus of Vernie McDaniel be dismissed. McDaniel has filed objections to the Report and Recommendation, asserting that the Magistrate Judge disregarded the fact that he was complaining of having his medication suspended by the warden prior to the disciplinary charge; and, that he was denied due process during the course of the disciplinary proceeding.

A petition for writ of habeas corpus is available if a prisoner is challenging the validity of his conviction or fact or duration of his confinement. *Serio v. Members of the Louisiana State Board of Pardons*, 821 F.2d 1112 (5th Cir. 1987). Challenges to conditions of confinement are not, however, available under habeas corpus; such claims must be brought pursuant to 42 U.S.C. 1983. See *Cook v. Texas Dept. of Criminal Justice Transitional Planning Dept.*, 37 F.3d 166 (5th Cir. 1994).

With respect to Petitioner's objections to denial of due process,

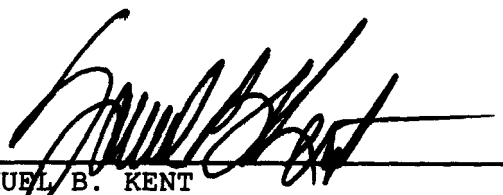
due process concerns are not implicated with respect to disciplinary punishment unless actual good time has been taken. In this case, Petitioner lost no good time and his objections are, therefore, without merit.

Having given this matter *de novo* review as required by 28 U.S.C. §636 (b)(1)(C), this Court finds that the Report and Recommendation of the Magistrate Judge is a well reasoned and correct application of relevant law and should be, and it is hereby, **ACCEPTED** in its entirety and incorporated by reference herein.

It is **ORDERED** that all claims concerning conditions of confinement are **DISMISSED** without prejudice for failure to state a claim for which habeas relief is available.

It is further **ORDERED** that all due process claims related to disciplinary hearing no. 20050088310 are **DISMISSED** with prejudice.

DONE at Galveston, Texas, this the 20th day of April, 2005.



SAMUEL B. KENT
UNITED STATES DISTRICT JUDGE